

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Jean Anne Rogers O.D.)
Tangible Personal Property Account No. P222585) Rutherford County
Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Rutherford County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$88,900	\$26,670

On July 23, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, the above assessment was not appealed to the Rutherford County Board of Equalization ("county board") during its regular annual session for tax year 2007.

The undersigned administrative judge conducted a hearing of this matter on December 19, 2007 in Murfreesboro. The appellant, Jean Anne Rogers, O.D., was accompanied by her husband, J. Mark Rogers. Assessor John Barbee was assisted by Pamela Oxsher, Supervisor of the Personal Property Section of his office.

Findings of Fact and Conclusions of Law

Dr. Rogers maintains a part-time practice of optometry at 226 North Spring Street in Murfreesboro. Heretofore, she has always relied on a certified public accounting firm to complete and return the tangible personal property schedule (required by Tenn. Code Ann. section 67-5-903) for that business location. In 2007, the responsible CPA suffered a stroke and – perhaps for that reason – failed to file the return with the Assessor’s office by the March 1 statutory deadline.¹ Consequently, the Assessor made a “forced assessment” on this account in the amount shown above.² Notice of this assessment was mailed to Dr. Rogers’ office on or about May 15, 2007. The notice informed the taxpayer of her right to appear before the county board, “which meets beginning June 1, 2007.”

¹However unintentional it may have been, this omission was hardly unprecedented. According to Ms. Oxsher's records, a personal property schedule for the subject account had not been timely filed in 8 of the previous 11 tax years.

²Due apparently to the adoption of a new methodology for valuation of the many non-reporting personal property accounts in the jurisdiction, the appraisal for tax year 2007 greatly exceeded the value most recently reported by Dr. Rogers' accountant (in tax year 2005). See State Board Rule 0600-5-.06(5).

The assessment change notice was promptly received by Dr. Rogers; however, unfortunately, her mother was then suffering from serious health-related problems which frequently confined her to a hospital in the state of Mississippi.³ As a result, Dr. Rogers spent much of the month of June there. Although she once telephoned the Assessor's office to inquire about the increased assessment of the subject property, her call was made after closing time. When Dr. Rogers managed to refocus on this matter, the published June 15 deadline for appeal to the county board had passed. This appeal to the State Board ensued.

A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and state boards of equalization, subject to the filing of "a complete listing or schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to be filed with the assessor." Tenn. Code Ann. section 67-5-903(d). However, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

In this regard, the Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived with the consent of the parties. [Emphasis added.]

Tenn. Atty. Gen. Op. 92-62 (October 8, 1992), p. 10.

Tenn. Code Ann. section 67-5-1412(e) was amended in 1991 so as to afford a taxpayer the opportunity for a hearing before the State Board to establish "reasonable cause" for failure to appeal an assessment of property to the local board of equalization. The Assessment Appeals Commission, appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502, has historically construed the quoted term to mean some circumstance beyond the taxpayer's control (e.g., disability or illness). See, e.g., Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994); John Orovets (Cheatham County, Tax Year 1991, Final Decision and Order, December 3, 1993).

After reviewing all the evidence of record, the administrative judge respectfully recommends acceptance of this direct appeal under the "reasonable cause" amendment. That statute has not been – and should not be – so strictly construed as to require proof that the taxpayer was physically incapable of making an appearance before the county board within the allotted time. Dr. Rogers was undoubtedly under considerable mental and emotional stress because of her mother's medical condition. In what practically amounted to an emergency involving a member of her immediate family, she could not fairly have been expected to devote much attention even to the prospect of a significantly higher property tax bill.

³Dr. Rogers' mother passed away in October, 2007.

By the administrative judge's calculation, the standard valuation of the personal property reported on the 2007 schedule submitted by the appellant immediately after the hearing is \$20,400 (after rounding).

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2007:

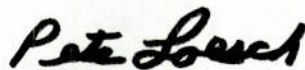
APPRAISAL	ASSESSMENT
\$20,400	\$6,120

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 11th day of January, 2008.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Jean Anne Rogers, O.D.
John Barbee, Rutherford County Assessor of Property